

Docket No.: 07-0277
Bench Date: (7-10-07)
Deadline: 7-10-07

M E M O R A N D U M

TO: The Commission

FROM: Ian Brodsky, Administrative Law Judge

DATE: June 26, 2007

SUBJECT: Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC -vs-
Level 3 Communications, LLC

Verified Complaint and Request for Declaratory Ruling
pursuant to Sections 13-515 and 10-108 of the Illinois Public
Utilities Act.

Order dated June 25, 2007.

Procedure

This matter is a complaint by Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC (collectively "NT") against Level 3 Communications, LLC ("Level 3") concerning alleged anti-competitive behavior. The procedure is set forth in Section 13-515 of the Public Utilities Act.

The ALJ Order was served yesterday upon the parties to the case. The statute provides the following timeline in Section 13-515(d)(8):

- parties may file a petition for review with the Commission "within 5 days of [the ALJ Order]";
- parties may file a response to a petition for review "within 3 business days" thereof;
- within 15 days from the date of ALJ Order, the Commission "shall decide to adopt the decision ... or shall issue its own final order."

There are no briefs on exceptions. In the event that no petition for review is filed, the ALJ Order is final and no further action is required.

Summary of the Order

NT alleges anti-competitive behavior by Level 3. The two entities are directly (physically) interconnected at present. NT delivers 56 million minutes of traffic per month to Level 3. The FCC requires direct interconnection at a threshold level of 200,000 minutes per month.

On January 31, 2007, the parties executed a contract extending the term for Level 3 to deliver traffic to NT for transiting to third-party CLECs. Later that same day, Level 3 sent notice terminating the agreement by which third-party CLECs can deliver traffic to Level 3 via NT's tandems. The same executive at Level 3 who signed the contract with NT also signed the notice of termination.

Through its actions, Level 3 seeks to maintain the direct interconnection with NT for its own use, while simultaneously disconnecting the direct interconnection used by NT to deliver traffic bound from competing CLECs to Level 3. This would allow Level 3 to benefit from the advantageous price offered by NT, while preventing the other 18 CLECs that subscribe to NT from obtaining the same benefit for Level 3-bound traffic. Those CLECs would be forced to route their calls through Illinois Bell Telephone Company ("AT&T") at a substantially higher cost. This would be detrimental to the viability of NT, and would constitute an impediment to the development of competition both generally and as enumerated in Sections 13-515(1), (2), and (6).

Level 3 also seeks to collect reciprocal compensation or other charges from NT. The law specifies that reciprocal or other compensation is not owed by a transit provider. Level 3 may collect reciprocal compensation from the CLEC originating the call, but the record indicates that it does not exercise its right to do so. The ALJ Order specifies that Level 3 may not collect such charges from NT.

The ALJ Order disallows Level 3's threats to disconnect NT to prevent it from delivering traffic, or alternatively to charge NT per minute of traffic terminated. It also imposes other statutory remedies, excludes the illegal terms from use by Level 3, and maintains the status quo in effect between the parties on January 30, 2007, unless a new agreement is reached.